IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 2228 of 2007()

ST 330/05 OF J.F.C.M. COURT, THIRUVANANTHAPURAM

PETITIONER: ACCUSED

G.BABU, AGRICULTURAL OFFICER,
VANDOOR, NOW AT, KRISHI BHAVAN, KAPPUR,
KUMARANELLOOR P.O., PALAKKAD DIST.

BY ADV. SMT.P.K.SANTHAMMA

RESPONDENTS: COMPLAINANT

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1. G.KRISHNAN KUTTY,
RETIRED SELECTION GRADE LECTURER,
POORAM HOUSE, KANJIRAMPARA, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM.

2. STATE OF KERALA REP.BY PROSECUTOR,
HIGH COURT OF KERALA.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2228 of 2007

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Dated this the 11th day of July, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. There has been a long fight in that case. The petitioner had come to this Court with Crl.M.C.3425 of 2006 and by order dt.7.12.2006 the petitioner was granted an opportunity to recall a witness examined for the purpose of further cross examination. That chapter of the story is over.

2. When the matter again came up before the learned Magistrate, the petitioner raised a contention that long after the said order dt. 7.12.06, on 16.4.2007 the matter has been settled between the parties and a receipt has been issued by the complainant agreeing to withdraw the case. The complainant denied such receipt and thereupon the petitioner filed application to enable him to send the said document to the expert and to adduce evidence on the question whether that receipt is genuine or not. The learned Magistrate rejected the said prayer. The petitioner claims to be aggrieved by the rejection of his prayers by Annexs. 5 and 6 orders.

3. The learned Magistrate has taken the view that the theory of a subsequent receipt dt. 16.4.07 is inherently improbable and such a theory is being advanced only to further protract the proceedings. The learned Magistrate further noted that even if such subsequent payment has been made, it has no bearing on the question of culpability under Section 138 of the N.I. Act.

4. I am called upon to invoke and exercise the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. Such jurisdiction, it is trite, is not to be invoked as a matter of course. Only in exceptional cases in the interests of justice shall this court invoke such powers. The crux of the dispute raised is that there has been a settlement after the passing of the order dt.7.12.06 by this Court. As rightly found by the learned Magistrate, the theory is inherently improbable and unacceptable. The learned Magistrate was perfectly justified in taking the view that it is not necessary to waste further time on enquiry on that aspect. Needless to say, if the petitioner had a contention that the payment had been made, the petitioner shall be entitled to resort to the civil process to claim return of the said amount. For an enquiry on that aspect, the prosecution under Section 138 cannot and need not be postponed. I do not find any merit in the prayer for the

invocation of the powers under Section 482 Cr.P.C.

5. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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